SIEW KUEN WILLIAMS

v.

YONG SIEW IN

HIGH COURT MALAYA, KUALA LUMPUR
SITI NORMA YAAKOB J
[CIVIL SUIT NO. 373 OF 1975]
16 AUGUST 1983

CIVIL PROCEDURE: *Taxation of bill of costs - Whether itemised bill could be taxed in place of gross sum bill - Whether order must precede taxation - Application under O. 56 r. 2(2) - Whether time barred.*

The party chargeable on a bill of costs (the defendant to the suit) had retained the taxing advocates to act on her behalf in an enticement suit. The action was subsequently dismissed and party and party costs ordered. The taxing advocates presented a gross sum bill dated 11 August 1982 to the party chargeable, of which sum RM20,275 was charged as the getting up fee. On the request of the party chargeable the taxing advocates submitted an itemised bill dated 17 March 1983 wherein the getting up fee alone was charged at RM50,000. The bill 17 March 1983 came before the Registrar and she ruled that she had jurisdiction to tax the itemised bill. A notice of appeal was filed by the party chargeable and after hearing arguments in chambers, the Judge allowed the appeal and ordered that the bill the Registrar could tax was the gross bill dated 11 August 1992. The taxing advocates applied under O. 56 r. 2(2) to adjourn the notice of appeal into open Court for further arguments.

Held:

[1] The application under O. 56 r. 2(2) was not time barred. The application fell within the 4-day limit fixed by O. 56 r. 2(2).

[2] The Registrar could tax the itemised bill though it exceeded the amount charged under the gross sum bill. Where an advocate accedes to a client's request to submit an itemised bill in place of a gross bill the gross bill thereupon has no effect. The itemised bill becomes the material bill and is subject to taxation. Sections 121 (1) and 132 of the Legal Profession Act, 1967, are not inconsistent but in fact compliment each other. (In *Re Taxation of Costs, In re Solicitors* [1943] KB 69).

[3] There was no necessity for an order of Court to precede taxation of the itemised bill by the Registrar. In the case of a solicitor and client bill, the obligation to pay becomes due the moment the client engages the services of an advocate.

[Appeal by party chargeable dismissed and order in chambers varied. Registrar ordered to proceed to taxation of bill dated 17 March 1983.]

Case referred to:
In re Taxation of Costs, In re Solicitor [1943] KB 69

Legislation referred to:
Legal Profession Act 1976, ss. 121(1), (1)(a), 132
Rules of the High Court 1980, O. 3 r. 2(5), O. 56 r. 2(2)

For the taxing advocates - Kok Wee Kiat
For the party chargeable - Saraswathy Devi

JUDGMENT

Siti Norma Yaakob J:

The present proceedings before me relate to an application under O. 56 r. 2(2) of the Rules of the High Court 1980 by a taxing advocate to adjourn into open Court further arguments on the notice of appeal filed against the decision of the Registrar dated 5 May 1983. The Registrar had, on 4 May 1983 ruled against the objection raised by the party chargeable on a bill of costs, (the defendant in the suit) by holding that she had the jurisdiction to tax the itemised solicitor and client bill dated 17 March 1983 which was then before her for taxation. Being dissatisfied with this decision, the party chargeable filed a notice of appeal dated 5 May 1983 and after hearing argument in chambers, I had allowed the appeal and ordered that the only bill the Registrar can tax is the gross sum bill dated 11 August 1982 which had been earlier presented by the taxing advocate to the party chargeable. Being dissatisfied with this order, the taxing advocate had applied to adjourn the notice of appeal into open Court for further arguments.

A brief background into this case shows that the party chargeable had retained the taxing advocates to act on her behalf in this enticement suit. The action however never went on trial as the plaintiff applied for and was granted leave to discontinue the action. The action was subsequently dismissed and the Court also ordered party and party costs which has since been taxed. Subsequently, the taxing advocates presented a gross sum bill dated 11 August 1982 to the party chargeable wherein a sum of RM20,275 was charged as the getting up fee and another sum of RM316.20 by way of disbursement making a total of RM20,591.20. Being dissatisfied with the getting up fee, the party chargeable had in a letter dated 6 October 1982 requested for an itemised bill to be taxed by the Registrar. Pursuant to this request, the taxing advocates submitted an itemised bill of costs dated 17 March 1983 wherein the getting up fee alone is charged at RM50,000, thereby, inflating the total costs due to RM55,423. The issue before me then was which bill is to be taxed by the Registrar. Is it the gross sum bill for RM20,521.20 dated 11 August 1982 or the itemised bill of costs for RM55,423 dated 17 March 1983?

The main objection raised by the party chargeable before me were (1) that the application under O. 56 r. 2(2) has been made out of time, (2) since she only consented to the gross sum bill to be itemised and taxed, the Registrar can only tax an itemised bill which shall not exceed the amount charged under the gross sum bill.

Under O. 56 r. 2(2), all applications for further arguments into open Court must be made within 4 days of the order made by the Judge in chambers. In computing any period of time less than 7 days, O. 3 r. 2(5) excludes weekly holiday or public holiday. My order in chambers was made on 20 May 1983, a Friday. The taxing advocates' application under O. 56 r. 2(2) is dated 25 May 1983. Discounting the intervening Sunday, this application therefore falls within the 4-day limit fixed by O. 56 r. 2(2) and is therefore not time barred.

Coming to the more substantial objection, Counsel for the taxing advocates has urged me to lay down guidelines as to how Counsels should conduct themselves when presenting bill of costs to their clients as he maintains there are apparent inconsistencies in s. 121(1) and of the Legal Profession Act 1976, (the Act) relating to remuneration of advocates and solicitors in contentious matters. Reading these two sections, I find no apparent inconsistency but that they compliment each other. Under s. 121(1), in the absence of any express agreement

as to costs, an advocate has the option of either presenting a gross sum bill to his client or an itemised bill. If a gross sum bill has been presented, the client may, within 3 months of such presentation, require the advocate to deliver instead a bill with detailed items. When such a request has been made, the advocate must draw out the itemised bill in the manner provided for by the Rules of the High Court; as is required by s. 132 of the Act. Going one step further, can the advocate then present an itemised bill in excess of the amount stated in the gross sum bill? The answer must be in theaffirmative as by acceding to a client's request to submit an itemised bill in place of the gross sum bill, "the gross sum shall thereupon be of no effect". The effect of these quoted words under s. 121(1)(a) of the Act has been tested in the English case *In re Taxation of Costs, In re Solicitor* [1943] KB 69 where the facts are identical. In that case the client had demanded a detailed bill from her solicitor after the latter had delivered a gross sum bill. On taxation of the detailed bill, the total sum amounted to more than the original gross sum charged by the solicitor. On appeal the Court of Appeal held that where a client exercises her rights:

> she must bear the burden imposed on her by the order by paying that amount of the detailed bill which is found on taxation to be correct without taking into account the amount of the gross sum first asked for by the solicitor.

Goddard L.J. went further by stating:

> If a solicitor delivers a gross sum bill and his client asks for a detailed bill, the solicitor must withdraw his gross sum bill and is treated as if it has never been delivered. The detailed bill becomes the material bill and is subject to taxation. The resulting position seems to me to be just and reasonable. The client who, not being satisfied with the gross sum charged, demands a detailed bill of charges must put up with the consequences, if the amount of the detailed bill turns out to be larger than the gross sum first charged. The client should therefore remember the advice given long ago which is especially true today: 'Agree with thine adversary quickly whilst thou art in the way with him'.

Following the decision of this case, I therefore vary the order I made in chambers on 20 May 1983 by dismissing the appeal and order that the Registrar proceed to tax the itemised bill of costs dated 17 March 1983 that has been filed in Court. Needless to say, it is up to the Registrar to decide on argument presented before her on the amount to be allowed for the getting up.

One last point I wish to clear is that references were made before me that there should be an order of Court before the itemised bill can be taxed by the Registrar. It must be remembered that what is in issue is the quantum of a solicitor and client bill of costs not a party and party bill where a Court order is necessary to determine who should be liable to pay for the costs of the proceedings before such a bill can be presented for taxation. In the case of the solicitor and client bill, the obligation to pay becomes due the moment the client engages the services of an advocate. There is therefore no necessity for any order of Court to precede the taxation of such a bill.

Also found at [1984] 1 CLJ 41